DOCUMENT RESUME

ED 250 970 HE 017 697

AUTHOR Hawkins, Brian L.
TITLE University Approaches to Software Copyright and Licensure Policies.
INSTITUTION Drexel Univ., Philadelphia, PA. Microcomputing Program.
PUB DATE Jun 84
NOTE 13p.; For related documents, see HE 017 694-696.
AVAILABLE FROM Drexel University, Microcomputing Program, Office of the Vice President for Academic Affairs, 32nd and Chestnut Streets, Philadelphia, PA 19104.
PUB TYPE Reports - Descriptive (141)

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS *Administrative Policy; College Planning; *Computer Software; *Copyrights; Higher Education; Intellectual Property; *Legal Responsibility; *Microcomputers; Purchasing; *Teacher Developed Materials
IDENTIFIERS *Drexel University PA

ABSTRACT

Issues of copyright policy and software licensure at Drexel University that were developed during the introduction of a new microcomputing program are discussed. Channels for software distribution include: individual purchase of externally-produced software, distribution of internally-developed software, institutional licensure, and "read only" access to additional software. The university is underwriting a substantial portion of the cost for computing, for faculty release time granted for the development of a project, and for laboratory and equipment resources. The position of the university is to enter into a written agreement with its personnel covering software and copyright ownership. Since the student purchases the microcomputer and software from the university, copyright liabilities for the software are placed with the individual purchasers. Institutional licensure places the liability with the institution, but allows for a one-time or annual university commitment for access to certain software. Possible approaches for the distribution of royalties are also discussed. Attention is directed to protecting the copyrights of others, including illegal copying or piracy of software. (SW)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED250970

University Approaches to Software Copyright and Licensure Policies

Brian L. Hawkins
Director, Microcomputing Program
Drexel University

THE MICROCOMPUTING PROGRAM AT DREXEL UNIVERSITY

U.S. DEPARTMENT OF EDUCATION
NATIONAL INSTITUTE OF EDUCATION
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official NIE position or policy.

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

Shirley Smith

Ewell Mann

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

For further information, contact:
Director, Microcomputing Program, Drexel University
32nd and Chestnut Streets, Philadelphia, PA 19104

HE017697

University Approaches to Software Copyright and Licensure Policies

Brian L. Hawkins
Director, Microcomputing Program
Drexel University

MWPS 84-A1
June, 1984

Requests for copies of papers in the Microcomputing Working Papers Series should be sent to: Working Paper Series, Microcomputing Program, Office of the Vice President for Academic Affairs, Drexel University, Philadelphia, PA 19104.

UNIVERSITY APPROACHES TO SOFTWARE COPYRIGHT AND LICENSURE POLICIES

In the Fall of 1982, Drexel University decided to introduce a dramatic, new educational program for the 1983-1984 academic year. The new program, which is presently underway, requires every freshman to have access to a personal computer for use in courses ranging from the sciences to the humanities.

The goal of this comprehensive program is to provide Drexel students with the resources and training necessary to meet the challenges of the future -- a future in which effective use of computers will be essential in virtually every field.

The introduction of microcomputing on a university-wide basis required a number of efforts in the areas of logistics, planning, and security. The issues of copyright policy and software licensure required efforts in all three of these areas. Logistical considerations were involved in the entire set of questions as to how the University attains or gains access for its students and faculty to externally produced computer programs and other copyrighted materials. In regard to planning, the University had to develop policies which would encourage the development of software by all members of the academic community (faculty, students, and staff) without compromising the rights of anyone's claim to intellectual property. Finally, in regard to security, the University had to take a strong position in protecting the rights of those persons, either external or internal, who have developed copyrighted materials. Minimally, the University had to come to grips with the issues that were generated in these areas as computers became more available and were integrated into the academic environment.

When Drexel University made the decision to require each student to have access to a microcomputer, one of the very first concerns identified by the Microcomputer Selection Committee was a set of minimum requirements for the software that would need to accompany each machine. In their report, they identified a set of five pieces of software

necessary for all students (word processing, spreadsheet, graphics, FORTRAN and BASIC). Yet even at this initial stage, concern was expressed about the cost of the software that would be required for each student. It was, therefore, decided that the five basic pieces of software would be included in the initial cost of the student's computer but that the University would strive to keep additional software cost to students at a minimum. This decision caused the University to pursue a number of alternate modes of student access to software. Although these approaches may not be applicable to all institutions, it seems appropriate to describe the channels that Drexel has identified at this time.

Channels for Software Distribution

One channel for distributing software to students is through individual purchase of externally produced software. Since the purchase of the microcomputer from Drexel University included the five pieces of software already identified, most of the basic tools that the faculty deemed necessary were already in the hands of the students. This also placed the copyright liabilities for that software with the individual purchasers. This was perceived to be important for both cost reasons as well as the reason of educating individuals about their own responsibilities and liabilities with software. The University is now involved in attempting to make other individual purchase opportunities available and attractive to students and faculty. Because of the University's massive commitment to microcomputing, the economies of scale of institutional purchase can make externally produced software available at a reasonable price and yet still allow for individual responsibility as to license agreements.

Another channel for making software available to students is through distribution of internally developed software. The development of special purpose courseware and software was essential at Drexel because of the lack of appropriate academically oriented software that would enhance the existing curriculum. In addition to a major faculty development effort, an internal Instructional Support Group of programmers and support staff was assembled. This approach has allowed for specially tailored course applications, as well as "free" software for students. There is no liability

for the institution in this method as clearly the University will not sue itself.. This method also allows for a new opportunity for financial income for the faculty, staff, and the institution itself as will be discussed later.

The third channel for distribution that the University has pursued is institutional licensure. This places the liability with the institution, but allows for a one-time (or annual) University commitment for access to certain software. This approach will only be pursued when it is perceived that there is a significant critical mass of students who would want or need this software. The costs involved in this approach are significantly lower to the student in terms of added costs for tuition, etc. than would be the case for individual purchase by the student. Institutional licensure agreements can be made with some software developers, perhaps because they believe they will profit more by an aggressively priced institutional contract due to the software piracy that would probably occur if an individual purchase approach were pursued. There are, however, two University concerns in using this alternative: the first is the issue of liability if the end users illegally copy software, and the second is the extent of financial guarantees which must accompany each contract.

A fourth channel for attaining access to software is only in an exploratory stage at the moment. As Drexel moves forward in developing both local-area and wide-area networks in support of the microcomputing program, one of the capabilities that is desired is attainment of "read only" access to additional software. For example, if it is not feasible or economical to obtain a given piece of software by one of the aforementioned methods, a student could use a system access method. Under this system software would need to be executable on the student's microcomputer, but not copyable. This approach requires extensive system controls and a method of tracing usage, but it eliminates copyright or license liability. On the other hand, it introduces the dimension of royalty payments for usage, somewhat analogous to the methods of royalty payments used in the music industry. However, just as in the music industry, there is a need for controls for fair and equitable identification of usage and hence royalty payments.

Developing a University Copyright Policy

An informal survey of other universities indicates that most have relatively well defined patent policies, but relatively few have specific policies in the area of copyright. This is not surprising since the obvious potential for income generation with patents has been greater than that of material protected by copyrights. Another possible reason for absence of university policy in this area is that there has been little institutional commitment of resources in support of materials that are covered under the auspices of copyright law. If a product is developed in a university laboratory, the university has made an identifiable and undisputable contribution and hence claimed some percentage of ownership. With materials that are copyrighted, on the other hand, such as a textbook, the University may not have made a specific contribution, with the exception of incidental usage of University resources such as a typewriter or secretarial support, and hence does not have any clear-cut claim, therefore the absence of a definitive copyright policy.

The whole area of software development, however, violates these basic premises. Patentable developments and certain copyrightable material come together into the broader generic category of "intellectual property." If a faculty member uses university programming assistance, computer time on a large mainframe, or a research assistant, the insitutional investment has become substantive. Such university investments were undoubtedly present at Drexel prior to the microcomputing effort, but they did not bring into focus the need for a University copyright policy. Now, with a concerted University sponsored initiative taking place in software development, and the potential for significant financial gain present from such an effort, it is essential that the rules of the game be identified clearly and precisely, and before contentions arise.

At Drexel University, there is NOT a desire or intent by the administration to modify the traditional relationships between the faculty and the institution, such as claiming any rights to a textbook or scholarly work. There is an interest, however, in sharing in the rights to those

activities in which the university has underwritten a substantial protion of the cost. With this in mind, an initial policy has been in development for several months now, with faculty and administrators defining the parameters. The overall objective of the policy is to aid, counsel, and support faculty in the production and marketing of their "intellectual property", sharing in the revenue gained in order to sustain such activities. Since official University policy has not been established at this time, it seems inappropriate to refer to specifics. It does, however, seem worthwhile to identify some of the major issues addressedand some of the directions being pursued.

One critical factor is the definition of substantial support on the part of the institution. At the moment, substantive involvement would include support such as faculty release time granted for the development of a specific product, the assignment of University staff, equipment, and laboratory resources to assist in the development effort.

Another factor that needs resolution is an agreed-upon distinction between and clarification of the issues of ownership as opposed to rights to royalty distributions. Under the new copyright law of 1978, statutory copyright is achieved as soon as a writing (code) is fixed in tangible form. Someone, normally the author-producer, has an ownership interest in this code. The big question is - who owns the copyright? Who has the distribution and marketing rights?

Normally, the copyright is owned by the author. But there is one exception - "a work prepared by an employee within the scope of his or her employment. . ." This is often referred to as the "work for hire" clause. In such situations, there is no question but that the employer owns the software and copyright. However, in a University setting, author-producers of software may be faculty, students, professional staff, or administrators, and the question of ownership based on "work for hire" is ill-defined. The fact that University resources have been made available for the development effort is not definitive. In light of these and other considerations, the position of Drexel University is to enter into a written agreement with its personnel covering software and copyright ownership,

especially in those situations where University resources are made available for the development effort.

Ownership is viewed by the University as a critical issue in the overall microcomputing effort since it is the owner that will control access and distribution of the intellectual property. Specification of an owner need not necessarily define the partners nor the extent of sharing in any royalty income derived from the product. For many reasons, not the least of which is the relative stability of an institution in comparison to the comings and going of individuals, it seems most expedient to define the University as the owner so that external agents desiring access to software developments will have a single and constant contact point.

The manner in which royalties are distributed, however, is quite another matter. If handled correctly, both parties may benefit; but an inequitable royalties policy can destroy the possibility of economic gain for both sides of a potential partnership between the University and faculty developers. If the University attempts to retain too great a percentage of the royalties, it is quite possible that a faculty member might do all his or her development at home using a personally owned computer. The University would then receive nothing, since the author-producer would clearly be the owner of the product. If on the other hand, the University policy provides real incentives for the developers, a partnership would become attractive to the faculty developer and significant income flow is possible.

At present, the discussions at Drexel regarding a fair incentive for the faculty suggest something in the order of 66% for the developers and 33% for the University. Initial review would suggest that such a split is not comparable to the percentages reflected in most university patent policies (33% for the developers and 66% for the university), but the circumstances and investments are not necessarily comparable.

Thus far, only faculty developers have been discussed. But are faculty the only developers within a university? Can only the faculty have intellectual property? Does the staff have any claim to rights of royalty for a development that they worked on? What is it that defines doing one's job for the wages paid, be that person a faculty member or a staff

member? This are difficult questions. Although it is possible to define development as a function of a class of people, i.e. faculty are developers and staff programmers are not, this method can undermine the overall sense of community and in certain situations not inequitable. Furthermore, it seems impossible to define all situations in this way. A more flexible approach would be to place thet burden of definition with the project team members themselves. If a faculty member comes up with an idea and works in concert with a staff member, let them negotiate the internal percentage of the 66% assigned to the developers. This places the decision making at the lowest and most appropriate level. In addition, it creates a greater alliance between developers as they are aware of their own extent of benefit. This approach also eliminates the University from liability as it applies to any claims of development on the part of support personnel.

One final factor that should be noted in the initial formulation of a copyright policy is access to the software byr members of the University community. In order to support the program at Drexel University,we are attempting to ensure is that any software developed with University support will be available to all members of the Drexel community without charge or royalty fee. Although this reduces a total market to some degree, it reinforces a commitment to partnership across the boundaries of the academic community. Since the software and courseware that have been created were partially underwritten with University funds, the students have in a way already paid for these developments, and it seems unfair to require them to pay a second time.

Creating a Supportive Organizational Structure

Certain organizational changes are needed to support the institutional goals providing quality education software to students at minimal cost and of encouraging development of software within the university community. The need to attain externally developed software as well as to negotiate arrangements for internally developed software has called for the University to be more responsive in both the legal and business areas. Faculty need to know where to go for advice and procedural clarification. Publishers and distributors of software need to know who to contact in order to identify developments at the University.

One solution presently being investigated by the University is the possibility of establishing a separate organization that would serve as the focal point for University developments. It could serve as the agent for both the individual developers and the institution as a whole. It could distribute royalty income and enter into a variety of business relationships which the University as an entity would not be able to do. It could also have the flexibility of entering into joint ventures, into Research and Development Limited Partnerships (RDLP's), and equity partnership arrangements making available needed seed monies for future projects. This organization, controlled by a Board of Directors consisting of both faculty and University officials, could provide the professional services and marketing expertise that an individual developer would not generally have available.

Whereas this concept is only in planning stages at the moment, it does have the potential of generating income for individual faculty members and for the endowment of the University as a whole.

Protecting the Copyrights of Others

From the beginning of the microcomputing program at Drexel, it was perceived that the University would have to educate the community and set a strong tone of leadership concerning the copyrights of others. The regulations that cover violations of copyright laws on a federal level are supplemented by two statutes in the Commonwealth of Pennsylvania. Although these laws are on the books, two problems make it incumbent on the University to take a more aggressive position. First, people seem generally unaware of the copyright laws and the potential exposure both personally and institutionally for violation, hence there is a strong need for education. The second problem is that there seems to be a tendency not to consider the copying of an electronic medium to be inappropriate due to the ease of the process. This ease of copying does not change in kind the problems such as plagiarism that have always been present in the academic community, but it does change the degree to which it will occur. Thus it seems appropriate for the academy to institute frank and open discussions regarding the ethics of such behaviors and to take a strong moral stand in opposition to these practices.

When the problems of illegal copying or piracy of software becomes a topic in such popular magazines as Time, and at the very same time microcomputers arrive en masse on college campuses, it seems quite likely that the campus may become a primary battleground where such test cases will be fought. With the precedents of NYU in the case of illegal photocopying in recent memory, and the case in which LOTUS Software sued an institution for illegal copying, it is clear that for the purpose of protection alone, institutions of higher education must establish clear policies and guidelines in terms of academic behavior in the area of copyright protection. Reliance on federal and state statutes is probably inadequate, and institutional policies and judicial procedures need to be considered and adopted. At the present time, Drexel University has begun a process which has included input from students, faculty, the Personnel Office, the Office of Academic Affairs and others in defining an all University policy that applies to all members of the academic community, including adjudicative processes for each category of persons. The role of education about these matters seems to be critical. At present, there are some very grey areas in the law regarding what constitutes an offense. This problem is magnified because of the ease of copying and the difficulty in identification of offenses. With these issues in mind it seems that the University can play a passive role in waiting for the test cases and the courts to define appropriate behavior, or the institutions of higher education can take a strong position in the definition and clarification of acceptable behavior in this arena. in the 1960's there were major campus-wide discussions and much legal input about the rights and responsibilities of students in the University. It seems highly probable that a variation on this theme regarding copyrights and the concomitant responsibilities will characterize the remainder of this decade. Hopefully, Universities will play a major leadership role in this dialogue.

Conclusion

The different aspects of copyright and licensure agreements that have been described in this paper are some of the issues that have surfaced in the past 18 months at Drexel University. Certainly these issues are not inclusive of all related matters, but they do serve to act as the basis

for dialogue on other campuses as well as Drexel's. Some of these issues may be unique to Drexel, and some may already have been resolved on many campuses, but from our experience with publishers, software houses, manufacturers, other Universities, and various judicial bodies in the city and state, these issues have not been dealt with coherently. As these issues may serve to provide a starting point of discussion on other campuses, we hope that developments and issues stemming from future iterations of this dialectic will be shared across institutional boundaries.